IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 28762 of 2005(Y)

IA.3645/05 IN OS.774/2000 of II ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

ARJUNAN, S/O.KUMARA BOSE,
`MURALIVILASOM VEEDU', KARINCHOORI,
MACHIYODU DESOM, CHENKAL VILLAGE,
THIRUVANANTHAPURAM.

BY ADV. SMT.C.NEEMA
SRI.SABU S.KALLARAMOOLA

RESPONDENTS:

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1. PRASANNA, D/O.KANAKAMBIKA,
TREES COTTAGE, ITTAKONAM, PERUMKADAVILAS DESOM,
THIRUVANANTHAPURAM.

2. GOPINATHAN, S/O.PARAMESWARAN NADAR,
PADIPPURA NALUKETTU PUTHEN VEEDU,
KARINCHOORI, MACHIYODU DESOM, CHENKAL,
THIRUVANANTHAPURAM.

BY ADV. SRI.L.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.28762/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN O.S.774/2000 OF II ADDL. MUNSIFF'S COURT, NEYYATTINKARA.

EX.P2 – TRUE COPY OF AMENDMENT PETITION FILED BY PLAINTIFF DT.24.10.05.

EXT.P3 – TRUE COPY OF ORDER REJECTING AMENDMENT APPLICATION DT.23.9.05

EXT.P4 – TRUE COPY OF AMENDMENT APPLICATION FILED BY 1ST DEFT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.28762 OF 2005

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DATED THIS THE 22ND JUNE, 2007

J U D G M E N T

Ext.P3 order passed by the learned Munsiff dismissing an application for amendment of the plaint is under challenge in this Writ Petition under Article 227 of the Constitution. The suit as initially instituted was for specific performance of a contract for sale of property. During the pendency of the suit, the property was assigned by the defendant to a stranger who was subsequently impleaded as additional 2nd defendant. Under the present amendment application, the petitioner sought incorporation of pleadings in the plaint so as to contend that the document executed in favour of the additional 2nd defendant is liable to be ignored and incorporation of an additional prayer that in the event of the court declining to grant specific performance, a money decree for the amount advanced to the 1st defendant be passed. A reading of Ext.P3 will show that it was the delay which had been occasioned in the matter of filing the application which weighed with the Munsiff in dismissing the application. But then, the learned Munsiff should have remembered that on the considerations which are applicable to exercise of power under Order VI Rule 17 C.P.C. as discernible from the Code and as explained by

various binding judicial precedents, all applications for amendment which did not cause any prejudice to the opposite side were to be allowed. In the instant case, no prejudice would have been caused to the opposite side. On the contrary, the amendment should have been found to be necessary for resolving the controversy involved in the suit. But there would have been inconvenience to the defendants. That inconvenience could have been compensated by awarding costs. Considering the circumstances which attend on this case including the circumstance that the alternative decree seeks recovery of only Rs.20,000/-, I am of the view that a total amount of Rs.1500/- will be sufficient costs.

2. Accordingly Ext.P3 will stand set aside and I.A.No.3645 of 2005 will stand allowed on condition that the petitioner pays Rs.1500/- by way of costs within one month from today. Out of the above amount, Rs.1000/- shall be paid to the respondents either directly or through their counsel in this Court and Rs.500/- shall be remitted with the High Court Legal Services Committee. If payment/remittance is made as above, the I.A. will stand allowed and the court below will permit the respondents to file their additional written statement and it is open to the respondents to raise all contentions which are available

to them through the additional written statement. If payment/remittance as directed above is not made, the I.A. will stand dismissed and Ext.P3 order will stand confirmed.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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